



SITLA Board of Trustees  
MINUTES  
Meeting held: July 26, 2018  
9:06 a.m.

**Present:**

**Board Members**

Tom Bachtell, Chair  
Lonnie Bullard, Vice-Chair  
Scott Ruppe  
Roger Barrus  
Donald Foot  
Rick Woodbury  
Michael Mower

**Staff**

David Ure, Director  
Ron Carlson, Audit Manager  
Lisa Schneider, Finance Director  
Rodger Mitchell, Assistant Director, Planning & Development  
Kim Christy, Deputy Director, Surface & External Relations  
Tyson Todd, Special Assistant to the Director, Uinta Basin  
Tim Donaldson, Assistant Director, Special Projects  
Mike Johnson, Chief Legal Counsel  
Ron Barton, Special Agent, Legal  
Andy Bedingfield, Mineral Resource Specialist  
LaVonne Garrison, Assistant Director, Oil & Gas  
Darran Baggs, IT Support Specialist  
Kyle Pasley, Deputy Assistant Director, Planning & Development – St. George office  
Chris Fausett, Deputy Assistant Director, Surface  
Deena Loyola, Public Information Officer  
Tom Faddies, Assistant Director, Minerals

**Others**

Paula Plant, Utah State Board of Education  
Marc Eckels, Wind River Resources Corporation  
Jonathan Bates, University of Utah  
Alisa Ellis, Utah State Board of Education  
Lionel Trepanier, Utah Tar Sands Resistance  
Raphael Cordaray, Utah Tar Sands Resistance  
Trudy Henderson, Utah Education Association  
Diane Goodwin, Brown Brothers Construction  
Albert Brown, Brown Brothers Construction

Dave Donegan, Sinclair Oil  
Sarah Thomas, Utah PTA  
David Damschen, Utah State Treasurer

## **Welcome**

Chair Tom Bachtell opened the meeting at 9:06 a.m. and thanked the public for their attendance. He recognized the presence of Alisa Ellis with the State Board of Education, and Dave Donegan, the Governor's nominee to fill the vacant spot on the Board that will be created when Chair Bachtell resigns.

## **Approval of Minutes**

Mr. Mower moved that the minutes from the May 17, 2018 be approved. Mr. Foot seconded. The motion passed unanimously in the affirmative.

Mr. Ruppe moved that the minutes from the July 13, 2018 meeting be approved. Mr. Woodbury seconded. The motion passed unanimously in the affirmative.

## **Confirmation of Upcoming Meeting Dates**

The Board decided to move the August meeting date to August 23, 2018. The plan is to meet in Moab on September 19, 2018 for a tour and on September 20, 2018 for a regular meeting.

## **Public Comment**

Mr. Lionel Trepanier from the Utah Tar Sands Resistance spoke regarding the Open and Public Meetings Act. He was concerned that the Board is not as open as it should be on discussions regarding tar sands and the acquisition of large blocks for tar sand development.

Chair Bachtell requested that Mr. Trepanier submit his written statement to the Director so the SITLA attorneys can review his concerns and act accordingly.

## Chair's Report

The Chair showed a video of entrepreneurs who drill wildcat wells for oil. The video presentation is available on the Utah Public Notice Website at <https://www.utah.gov/pmn/files/414925.pdf>.

There is more known oil in Eastern Utah than in the State of Texas; technology is the main barrier and efficiencies and costs are interrelated.

Chair Bachtell introduced Mr. Marc Eckels, chairman of the Utah Geological Association. He has lived and operated in the Uinta Basin since 1983, and is currently working with the Seven County Infrastructure Coalition. Mr. Eckels said that oil and gas plays nationwide are having significant transportation issues. Oil and gas operators are seeing steady production but lack the pipeline infrastructure necessary to get the oil to the refineries. This is a major problem specifically for the Uinta Basin.

Over the last two years, thanks to 10,000 foot deep wells and 2 mile laterals, there has been increasing production in the Uinta Basin. Production peaked at 94,000 barrels a day in November 2014. Then the price of oil started to collapse. By February 2015, the rig count had dropped from 25 to about 15 and then by February 2016 it was zero. Drilling for oil and gas had totally stopped in the Uinta Basin. Refineries in Salt Lake had spent a large amount of money to accommodate more production volume from the Uinta Basin. By July 2016, production had dropped by approximately one third, from 94,000 to 60,000 barrels a day. At that point, several of the refineries went to the operating companies and big operators in this play in the Uinta Basin- Newfield, EP Operating, Crescent Point, and Finley. Production has come back up steadily since August 2016. As of January 2018 we were back up to 82,000 barrels a day.

Operators in the Uinta Basin face a hard problem when we that level of production is reached. The Salt Lake refineries don't have capacity to refine more than about 80,000 to 90,000 barrels a day. Right now, it's particularly curtailed because of the fire at the Holly Frontier Refinery in March 2018. They will hopefully be back up to speed in August. Still, there is often no place for Uinta Basin producers to go with their oil. There are too many "drilled uncompleted wells", where a company spends 2/3 of the cost of drilling a well and then can't complete it until there's

space at a refinery. That is happening nationwide, including in the Permian, but is particularly acute in the Uinta Basin.

Earlier this year the Seven County Infrastructure Coalition attempted to find long-term transportation solutions for the Uinta Basin. Basin producers traditionally have suffered significant discounts, usually about 18% less than the West Texas Intermediate (WTI) benchmark price. That obviously diminishes SITLA revenues and ultimately resources provided to the beneficiaries of the Trust. It affects revenue to the producers, the royalty owners in addition to SITLA, including the Ute Tribe, private individuals, and the Federal government. It is important that we find a way to get the oil someplace that can handle the excess production oil. One alternative considered was to build a pipeline from the center of the Uinta Basin to Carbon County -- Wellington.

The Basin has a large demand for frack sand and casing. Currently that comes by truck from Texas or Wisconsin, but if there was rail bringing oil out, the same railcars could be bringing those types of products in. This would be a short-line railroad. The basic idea is not new, but has always run into cost issues because they were trying to come up through the Book Cliff Mountains. In 2013-2014, the estimated cost of the railroad was too high because the proposal required ten miles of railroads. This proposal is based on leaving the Uinta Basin without having to build a tunnel. You can go east to Western Colorado and ultimately get to someplace like Rifle, Colorado. At Rifle there are the old Denver/Rio Grande railroad tracks and now Union Pacific, and the BNSF also has rights to use those tracks, so there is a competitive situation between the two class-one carriers.

Since the last time Mr. Eckels was at SITLA to speak with us, the Seven County Infrastructure Coalition has retained a rail consulting company in Washington called R.L. Banks. They've been around for a long time and they know the rail business and the short-line rail business very well. They are studying route alternatives and the economics of this to determine whether it's feasible to do this or not. They have submitted a draft of their report and will have a final report in August. The group will discuss their findings with the SITLA Board. One of the questions they have to answer: is there a market away from the Uinta Basin and away from the Salt Lake area refineries for this crude oil?

Mr. Eckels spent a week in Houston recently and visited with representatives of some of the largest refineries in the U.S. there along the Gulf Coast. This group included Motiva, which is a refining company solely owned by Saudi Aramco. They operate the largest refinery in the U.S. – a 630,000 barrel-a-day refinery in Port Arthur, TX. It includes Exxon Mobile, Chevron, Marathon, and Shell. Big refining companies have big capability. The Uinta Basin's waxy crude oil is of particular interest to certain refineries, depending on their equipment and the products they produce.

One of the things that provides an attractive market for waxy crude oils from the Uinta Basin is the manufacture of all the base oils. Base oils are the basic foundation of lubricating oils. The refineries make base oils and then they sell the base oil to lube oil manufacturers who put additives in to package and sell. The largest base oil plant in the U.S. is at Motiva Enterprises. They produce 40,000 barrels a day. The second largest is at Chevron in Mississippi, where they produce about 25,000 barrels a day. Both of those refineries have expressed significant interest. None of the refineries Mr. Eckels inquired with– those who had equipment suitable for this, but not necessarily the capability to receive crude by rail – have a terminal nearby where they can go by rail and then transfer the oil from the terminal to the refinery somehow. That is in process, but Mr. Eckels estimates that there is a market for at least 400,000 barrels a day of Uinta Basin waxy crude oil outside Utah. With production at 80,000 barrels a day and being held back now, that shows enormous potential for SITLA and many others if this rail can be built.

Chair Bachtell asked that the report be shared with Director Ure when it's completed. He also asked whether Mr. Eckels is seeking a \$30 million grant from state community impact board (CIB) funds, which come from federal mineral royalties. Mr. Eckels said there is a grant application proposal in process and there is a need for due diligence to possibly identify federal money to help build a railroad. Mr. Eckels said that if the feasibility study proves successful, money can be borrowed on a low interest basis. The railroad would be used as collateral; there would be no personal collateral. The CIB request is to be presented on September 10<sup>th</sup>, and they would appreciate support from SITLA because they're going to be asking the CIB to put up the money. Some of the industry players will help as we go. \$30 million is needed on the front end of this process before the project can actually start receiving any of the money from the federal government. That up-front money would be spent on route identification and selection, right-of-

way acquisition, a feed study for front-end engineering, a design study, and subsequent design work to get the project far enough down the road that an application for the loan from the federal government can be made.

Chair Bachtell thanked Mr. Eckles and turned to Director Ure who asked whether there had been communication between the governors of Utah and Colorado. Mr. Eckles explained that both states will benefit from this because of the economic activity associated with the railroad. Additionally, some of the resources that could go to alternate markets are located in Northwestern Colorado.

Mr. Eckles noted that he recently met with the Ute Indian Tribe since they would be the largest single beneficiary of an uplift in the price of crude in the Uinta Basin, with SITLA the second biggest winner. Chair Bachtell commented that property owners and operators would benefit tremendously. Additionally, there is Ute Land from where this railroad is to start (near Roosevelt) over to Bonanza where it could connect with an existing railroad and use 35 miles of existing rail. That discussion has been started also. For the coal mine railroad you go over some tribal land. It's possible to go around it, but it would be better to go straight. There's interest on the part of the Tribe. Mr. Eckles made it clear that no deal has been made, but that these discussions started in January and has continued to the present.

Mr. Bullard asked if there are eminent domain rights associated with this proposal. Mr. Eckles responded that there are. He said that it's likely they won't be necessary in most places. Mr. Bachtell interjected that there would not be any against the Tribe. Mr. Eckles explained that the Tribe will either be a willing participant or the railroad will have to go around the reservation.

Chair Bachtell thanked Mr. Eckles for his presentation. Mr. Mower announced that the Utah State Treasurer had joined the gathering. He was recognized and welcomed to the front by the Chair.

Chair Bachtell then invited Mr. Mitchell to speak to the **Notice of Minor Development Transaction – Sale of 12.4 Acre Parcel at the NW Corner of the SR-18 and Snow Canyon Parkway Intersection in Washington County.**

Mr. Mitchell presented this as a problematic piece which is in the trust for Miners Hospital. It has major access problems. There's a jurisdictional wash going down through the middle of it. SITLA found a buyer who would like to put his horses there. He's offered the appraised value or \$8,000 per acre, whichever is greater. Chair Bachtell confirmed that the Real Estate Committee has reviewed the development and recommended the sale of the property.

**Discussion Regarding Teasdale Parcel Negotiated Sale.** Mr. Bedingfield explained the extensive history to this parcel. It was first permitted for sand and gravel about 2 1/2 years ago by Brown Brothers Construction. He recognized that Albert Brown and Diane Goodwin were in attendance representing Brown Brothers. The land was permitted to Brown Brothers who went through the county to get their conditional use permit and zone change. There were complications with the county process, but ultimately they were granted their conditional use permit. The county was sued by an opposition group – Friends of Red Rock Utah. Ultimately, it went to court and has since been resolved. No mining has taken place yet. In 2017, there was a serious offer to purchase the property (rather than mining it). The land was put up for auction, but there were no bids submitted. Chair Bachtell asked who instigated the auction. Mr. Christy answered that Mr. Dick Van Dyke had asked for it to be put up for sale.

When it didn't sell, Brown Brothers submitted another materials permit application for sand and gravel. SITLA offered those competitively. When SITLA advertises, the advertisement is made to gauge any competitive interest including purchase, sand and gravel, surface lease, or an exchange. Most of the time we only see competitive interest for sand and gravel from sand and gravel companies. We received interest from three additional parties, so we went out to bid. Three outfits responded: Brown Brothers Construction, Friends of Red Rock Utah, and Alexis XI. Through the bidding process we saw guaranteed revenues, at net-present value when discounted at 7.5% per year, of \$136,000 guaranteed and \$381,000 potential production from Brown Brothers. The Friends of Red Rock Utah submitted a bid for a conservation surface lease with option to purchase. The surface lease gave a net-present value of \$71,000 and if they exercised the right to purchase, it would be \$503,000. The third bid was from Alexis XI (Dave Van Dyke). His bid was a purchase which we value at \$525,000.

Mr. Bedingfield explained that SITLA analyzed the bids to determine what was in the best interest of the beneficiary and determined that the best choice was option #3: Negotiated sale to Alexis XI for \$525,000.

Chair Bachtell clarified that on bid #1 SITLA would keep the property with potential future sale of the surface if we found it expedient. He then asked what the property be worth if it was mined first. Mr. Bedingfield announced that SITLA had looked at mining the property first and developing it later, which is normally a good idea. In this case, if Brown Brothers mined it all – option #1 where SITLA got all the possible royalty revenues and received \$381,000 net-present value, in year eleven we would have to sell the property for \$320,000. The bid we have for \$525,000 is largely motivated to stop the gravel pit. That's created the market for the parcel. We expected the market would drop significantly post-mining because there wouldn't be the interest from the bidders to put forth that kind of money.

Chair Bachtell asked about the current appraisal without the sand and gravel. Mr. Bedingfield explained that “we haven't disclosed the appraised value.” Mr. Mower asked, “Who is Alexis XI?” Mr. Bedingfield replied that it is Dave Van Dyke’s company. “Alexis XI is a neighboring land owner – not a producer. His option would be to stop production.” Chair Bachtell invited the audience members to participate in the discussion. He recognized that Brown Brothers had sent a letter and that he would like to make the letter a part of the public record. It is posted on the Utah Public Notice Website at <https://www.utah.gov/pmn/index.html> (under State/SITLA/Board of Trustees).

Mr. Ruppe asked about the beneficiary's position on the matter. Ms. Plant replied that the Schools for the Deaf and Blind were approached when it was originally an option and they had the Board of Education go into closed session to discuss it. The State Board of Education said that they were going to defer to SITLA. Chair Bachtell asked for Ms. Plant's recommendation. She deferred and said that in her personal opinion, it's the nuisance factor that is driving up the price right now.

Chair Bachtell asked why SITLA's financing brings in a lower net-present value and inquired about how many years the loan should take. Mr. Christy answered that when SITLA finances the



sale of a property over 20 years, it's at 2.5% over prime, a variable rate. There's a 7.5% discount which is the average performance expectation for the permanent fund. That's why there's a disparity in the present values.

Mr. Mower and Mr. Christy clarified that under the Friends of Red Rock bid SITLA would only be certain of three years or rental money, anything beyond that would be optional for them.

Mr. Bullard commented that he had read the letter from Brown Brothers and was troubled by the loss of potential sand and gravel resources, even if the beneficiaries are getting full value. We are in a growing state but we're locking up resources – we all want to drive on smooth roads yet it's very difficult to unlock resources.

Mr. Ruppe explained that normally he would want to develop the land and keep the fee simple title for the future, but the value is not going to be there in the future. This kind of offer is because of the nuisance value. The question is what the land would be worth after it's mined. We could still develop it but there won't be the same value in the future.

Mr. Mower questioned the legal ramifications of the different choices. Chair Bachtell explained that we cancelled the mineral lease so there is no repercussion in that regard even though Brown Brothers spent money to develop that lease. Mr. Woodbury asked if the legal obstacles are cleared now. Mr. Bedingfield explained that the group would have to go through the county process if it wanted to develop it.

Mr. Ruppe asked if we could chose option #3 if it's paid in full and not financed. Chair Bachtell explained that that's not the offer. That would be a counteroffer. Mr. Bedingfield clarified that Alexis XI would prefer to pay it all up front. Other alternative options were discussed.

Chair Bachtell asked a whether this should have been a notification rather than having SITLA staff asking for the Board's approval. Dir. Ure said that staff is trying to respect the Board and its discretion. Chair Bachtell clarified that the staff wants to have a Board vote on this issue, and Dir. Ure replied in the affirmative. As a negotiated sale, it needs board approval.

Chair Bachtell asked what Director Ure would like the Board to do and he replied that he would like for the Board to accept the highest value offer.

Mr. Woodbury explained that, with all due respect to Brown Brothers, situations like this are a risk of doing business; business people lose money on fixed costs like this. SITLA needs to keep the beneficiaries paramount and take the best deal. Mr. Foot said that revenue generated for beneficiaries only comes about when they go into production. "We don't know what obstacles they'll face – it could be years before we saw any revenue." Mr. Bedingfield agreed that that scenario is something to be considered; that they did not take it into account when they were weighing the options.

Director Ure commented that he has had great discussions with the county commissioners and legislators who represent the area and they understood that SITLA had no real choice in the matter and recommended that we do what staff thinks is in the best interest of the beneficiaries. Chair Bachtell stated that there is value in the gravel; and we would still own the property after. Teasdale, Utah, is a destination place for people, but without water like many other areas. Perhaps SITLA could take advantage of the gravel and ask for a reclamation of that area for future development and maybe get a better value overall for the beneficiaries.

Mr. Ruppe reminded the board that a "bird in the hand is better than a bird in the bush." He then moved to accept the \$525,000 offer if paid in full in six months. There was dispute about whether we can pose the acceptance in that way. Chair Bachtell offered to hold this decision until the August 23, 2018 meeting. Mr. Mower reminded us that he would not be at that meeting. Mr. Bullard asked, "Why would the bid go up? People can see that there's a more than \$100,000 difference between the first and second amounts." He moved that the Board approve option #3 as being in the best interest of the beneficiaries. Woodbury seconded the motion. Chair Bachtell called for a vote. The motion carried, with Chair Bachtell and Mr. Foot voting against the motion.

Mr. Bedingfield presented a proposed lease for two school parcels that are located in the Book Cliffs area, east of Green River and Price, near a coal mine operated by Utah American Energy in the Lila Canyon, and within the Williams Draw by application area. The company is currently

looking to lease the federal ground to the north and south of these two areas. Our two parcels sit in the middle of the federal lease area, and it is anticipated that the company could be mining on these within 10 years. There are quality coal resources on both of these sections. There's a fault that runs between them but the north ends and south ends have great coal on them. The proposal includes a \$50,000 bonus payment, and everything else would be deferred until production as a standard coal lease.

Mr. Faddies stated that geologically this is a tough piece of coal to mine. He didn't expect it to be leased for a couple of decades. The bonus payment work out to \$0.61 cents per ton. The federal lands in the area are Red Rock Wilderness proposal areas. The fault will require helicopter drilling and impact to the surface; it's geologically and economically risky. There will be a lot of pillars on the section so recovery will drop to 50-60%. At today's royalty rates, this tract could gross about \$15,000,000. It is classical bypass track coal. There is mining currently happening around our properties. If SITLA was not a good partner, a prudent operator would gain a right-of-way on federal land between our two sections, bypass us, and come back to talk to us after another decade. This is our opportunity to cement a very good business deal. This proposal was recommended by the minerals committee in May.

Mr. Foot noted that there isn't an insurance clause in the lease. He was concerned that we didn't have a "hold harmless" or indemnification terminology. Mr. Bedingfield noted that normally such agreements have that language and that they'd make sure it's there. Mr. Faddies explained, "That's a heavy hold harmless. Mr. Foot commented that we should be named on their insurance. Mr. Mower moved to approve the purchase. Mr. Ruppe seconded. The motion passed unanimously in the affirmative.

### **Director's Report**

Director Ure began his report by thanking the Board for their time and energy that they contribute to support our schools. He updated the Board on some building remodeling that has taken place on the 6th floor and noted that more is to come on the 5th floor. He noted that Dave Alldredge has left the agency and that a new hire is being considered. Additionally, he mentioned that we have yet to hire a new attorney, but that the hiring process is underway. He

also remarked that, despite news to the contrary, coal is not a dying energy source, and that there are many more opportunities like the one the Board just passed. SITLA will have good offers in the year to come. People around the world are seeking Utah coal. Finally, he remarked that development in the St. George area remains strong.

### **Report on WSLCA Conference**

Lisa Schneider reported on the WSLCA meetings that took place in Minnesota from July 8-12, 2018. She said that several staff and Board members attended and that it was a great conference jointly hosted by the staffs from Wisconsin and Minnesota. Visitors from the Department of the Interior were also in attendance and made good presentations; they were open and forthcoming. She noted that there were investment strategies discussed. Additionally, there was an IT demonstration. She remarked that while many of our staff were in Minnesota, our GIS group was in San Diego receiving an award for their exemplary work in using mapping technology. She also said that a primary point of conversation was about how conservation and trust lands merge. She reported that she and Director Ure worked with a group looking to increase the profile of WSLCA to make it more meaningful to the states and their affiliates.

Chair Bachtell agreed that the conference was worthwhile and encouraged other Board members to attend in the future. Mr. Barrus concurred and added that he appreciated the interaction with other groups, especially federal agencies. Director Ure commented that WSLCA can become a powerful lobbying entity on behalf of school kids. It's been impressive to see the nearly 20 affiliates come together over the last two years. We're helping to spread the word that our agenda is to correlate and work together to get things before Congress. WSLCA will set the agenda for Congress on what is best for western states and their obligations to the schools.

Mr. Bullard asked about, and Ms. Schneider provided the details for, next year's program. Mr. Mower agreed that the meetings are important to help all the stakeholders to understand the role of trust lands in the western states. He said that the Department of the Interior is more interested in working on public lands issues than ever. It's valuable to have the synergy of all the players present for this meeting. It's more than a social thing. Kudos to staff who participated because we're accomplishing real policy objectives.

## **Beneficiary Report: Steps toward Establishing a Protection and Advocacy Committee**

Ms. Plant updated the Board about the transition from beneficiary representatives under the Utah State Board of Education to the new Protection & Advocacy Committee. She presented a slideshow which can be found at <https://www.utah.gov/pmn/files/414917.pdf>.

During her presentation, Chair Bachtell recognized Treasurer David Damschen who then thanked the Board for the opportunity to speak. He recognized the complexity of the incredible work the Board does. He acknowledged the amount of time and expertise that is necessary for successful service to the Board. He recognized the importance of what the Board has to do. The Treasurer stated that he was happy to have stayed out of the legislative process for the development of HB404 given what the legislation does. It was an important initiative; they were seeking to do what's best for the Trust, and he is here to do the work required of him as a public servant. He raised concerns about the code requiring that a member of this Advocacy Committee "shall have demonstrated a commitment of time and loyalty to the purposes of the Trust." He reported that the pool of available prospects for service in this capacity is limited to former SITLA Board members, former members of the Investment Advisory Committee (which worked previously with the office of State Treasurer), and other folks who have done something in service to the Trust. He stated that it creates a very shallow pool of candidates. As a result, his office had narrowed their search to five prospects and only two were willing to serve.

The Treasurer is hoping to convene a phone meeting with members of the SITFO Board to complete the process of getting their nominations in place.

Mr. Mower asked how is the new Advocacy committee is going to work. There's concern that it will be a shadow SITLA committee so there is a second group overseeing everything we've done. He compared it to the creation of the SITFO office and how it has changed work for the Treasurer's office.

Mr. Damschen said he sees this new committee in an oversight function. "The mandate on this committee is to appoint a Director. They will meet a couple of times a year to review reports and oversee. It as far beyond the scope and capacity and qualifications of the committee to overrule or step into the role of what the SITLA Board does. Likewise, he asked the Board to consider its

relationship to SITLA staff. The Board is not here for the same long hours, doing the analysis, digging in. The Board simply doesn't have the time and energy to avail themselves of that level of detail. That is why the staff exists: to do the administration -- the work which allows the Board to handle a sliver of the work that is done by staff. This committee is another step removed in that regard. It's important that this new committee understands their role and doesn't step outside their jurisdiction. He reported that the Treasurer's office, the Advocacy Committee, and Ms. Plant's office, the State Board of Education, the SITLA Board, and SITLA staff are all working for the same beneficiaries. There is an obligation to our constituents to work constructively together to solve problems and accomplish the ultimate best benefit to the beneficiaries in every respect of what we do. There may be situations where there are concerns, disputes, struggles, and disagreements about how to fulfill each group's fiduciary duty. They have to be items of discussion. We have to work together to resolve those problems.

Chair Bachtell commented that he has read the statute several times and would have designed it differently. He doesn't see the new Advocacy Committee as interacting with SITLA; only the Director is interacting with SITLA. The committee stands back. If the committee interacts, it will be by invitation. The Director has a low budget and a lot of duty. The committee is a policy committee. Treasurer Damschen acknowledged that there is an awareness and willingness on the part of the drafter of the bill to admit that there are fuzzy aspects to the litigation. The legislator is looking at where it needs to be amended.

Mr. Bullard expressed his concern about the concept of a "shadow board" or aspects of corporate governance. Community boards where you can offer business expertise unfettered by politics and unfettered by fundraising are unusual. This Board has a great cause but it also offers the ability to get into business-related issues without regard to the political process on Capitol Hill and fundraising. He is concerned about how the Advocacy Committee gets started. There has to be a corporate governance process that is followed or you will lose businessmen that will not be willing to step into a situation where there's a shadow board looking on and second-guessing or telling them what to do. He explained that several years ago he was on a board where there was a situation similar to this. It got to the point where he couldn't operate on that board feeling like what they were really asking him to do was to ratify business decisions made by venture capitalists who were hired by the staff; that his job was to "rubber-stamp. That is not the way the

SITLA Board functions. We need to be sure that corporate governance is allowed because this board has the fiduciary responsibility to oversee the Director and make decisions.

Treasurer Damschen commented that he agreed with Mr. Bullard's concerns and that it's important that we work together to have an open line of communication between his office and the SITLA Board as well as with the State Board of Education and all of the stake holders. He wanted to be sure that the new committee does it right. Working together we can identify sections of the statute that need to be amended in order to clarify roles and responsibilities as things move forward. He expressed his belief that the fiduciary responsibility of the SITFO Board and the SITLA Board is about 95% of what is needed. He was attempting to drawing from the intent of those who advocated for this legislation – to put this new structure into place. He accepted the notion that fiduciary obligations are met fully met in full and that this new office is really moving the Children's Trust section to a new place. Looking back at what Mr. Donaldson and Ms. Bird have done historically, that should be the model for the new Director's responsibilities.

Chair Bachtell explained his understanding that the Advocacy committee is a policy committee. The first policies that are implemented will set the tone for how it is administered and perhaps outreach should be made to the SITLA/SITFO Boards for suggestions as to what that policy may be. Mr. Ruppe said that he sees two roles for this committee: protection and advocacy. He feels the advocacy piece is understandable. He believes the protection piece is an effort to insulate the SITLA Board from some of the political arrows that they would otherwise take. Chair Bachtell agreed that the new Director could certainly take arrows if that were the policy.

Ms. Plant returned to her presentation. The Treasurer's office will appoint a person, and the State Board of Education has appointed her to the Advocacy Committee. She reported that there are differing ideas about how this committee will work. In June, the State Board of Education called a meeting to try to bring a group of people together so that we could begin to have a conversation about moving forward. The State Board of Education wants to be supportive and helpful in moving forward. The Treasurer and his chief deputy were there along with Director Ure and leaders from the State Board of Education. The decision was made to email every 2-3 weeks and that will be sufficient to update one another on the progress of the committee would be

important. Every member of the group had issues with the legislation. There was a sense that it was important to get the process in place before they start tinkering with the legislation. Funding issues were identified. The intent was for the bill to have no fiscal note, but it's difficult to take an office of four people and make five people in two offices under the same budget. There are solutions can work through thanks to the treasurer being willing to help out.

Part of the role of the committee will be to decide what to pay the Advocate. That will impact the future funding request. The next steps begin when the Advocacy Committee is in place. Mr. Barrus asked if there still a School Children's Trust Section under the State Board of Education. Ms. Plant explained that their group will still be providing training to the districts and community councils. They will now have a smaller staff and their focus will be on the program, training, and councils.

Mr. Bullard if there is a term limit on nominating committee members or the Advocate. The Treasurer referred to the statute and said that the terms are being staggered by 2- and 4-year appointments. He hopes that one of SITLA's will be a two-year appointment so that one from the investment side will also be two years. The Director will be a four-year appointment. Director Ure wondered if there is a term limit on the Director or the members of the committee. He reported that the Governor has said that he doesn't want to see more than two terms, but the legislation is silent on the issue.

Mr. Damschen said that he appreciated the opportunity to work together and expressed his interest in having the Board reach out to his office as there is much yet to be done.

### **Discussion of HB404/Utah Code §53D**

Chair Bachtell encouraged Mr. Donaldson to move through his presentation quickly as much of the topic has already been discussed. Using a PowerPoint presentation that is available on the Utah Public Notice Website at <https://www.utah.gov/pmn/files/414915.pdf>, Mr. Donaldson set out to clarify what the Advocacy committee versus what the Director of the Advocacy Office, who he referred to as "The Advocate", will do. The committee's rule and policy role is in governing the Advocate and office. The committee does not give policy direction to either SITLA or SITFO Boards. They don't have any governance powers.



Mr. Donaldson proceeded to explain the bill. The committee will submit two Director-candidate names to the State Treasurer who has to appoint from one of those two or ask for new nominees. The committee annually evaluates the Director's performance and compensation. This committee has to meet at least quarterly. The Director/Advocate is the primary beneficiary representative in state code (per Utah State Code 53D(2), 53D(1), and 53C). The Advocate is required to act in a fiduciary capacity with undivided loyalty to the current and future beneficiaries. Additionally, the Advocate is required to have direct relationships and open communication with the Trustees and some others, including staff at key levels within the organizations. The Advocate recommends audits to the State Treasurer, helps train the public, stays informed, provides accountings and reports and is even required to advocate against the state using a Trust asset to pursue an inconsistent state purpose. That is a unique provision of law. The Advocate provides staff support to both nominating committees.

The universities, the State Board of Education, PTA, any kind of educational organization still have standing to act on behalf of the beneficiaries when it comes to legal matters. Only the primary beneficiary representative has the explicit statutory right to be in committee meetings, closed sessions, to have access to personnel records, to get notice of emergency meetings, to petition to remove the SITLA/SITFO Director, get notice on major items that they need to know about to protect beneficiary rights, and to get a response from the Director.

Mr. Donaldson clarified that the committee's primary function is to function as the "council of elders" to oversee the Director. They are the ones who have the power to control the Advocate who has a four-year term. The Treasurer can't remove the Advocate. The committee has the responsibility to be informed and to be a fiduciary in an independent/oversight capacity. He said that from his perspective it is a strong part of the law that requires members of the committee to have years of experience and proven loyalty to the purpose of the Trust.

## **Resolution Regarding Appointment of Advocacy Committee Members, Board Resolution 2018-2**

Dir. Ure introduced a proposed Resolution that allows for selection of the SITLA Board appointees to the new Advocacy committee. He provided a list that contains all nominees

submitted by members of the SITLA Board. He recommended that the Board move into a closed session to discuss personnel matters and reminded them that they must have a public vote after the closed session.

Mr. Ruppe wondered if all the nominees have consented to serve. Dir. Ure said that he had not spoken to each of them, but that he is confident that they would all will accept an appointment.

Mr. Mower asked that they adopt the resolution then have the discussion – one that could be prolonged. Chair Bachtell offered that they could change the agenda and move the item regarding the appointment of the committee members to the end of the meeting in order to be gracious toward members of the audience.

Mr. Ruppe moved to approve the Resolution. Mr. Woodbury seconded it. There was a unanimous vote in the affirmative.

Chair Bachtell announced that they would skip the closed session for now, and proceed to the next item on the agenda.

### **Presentation on Emery, ACE Legislation (HR4257), and Process Overview**

Mr. Donaldson made his presentation regarding Emery/ACE Legislation and process overview. He shared a slide show which can be found at <https://www.utah.gov/pmn/files/414909.pdf>.

Chair Bachtell clarified that we would talk about both (g) and (j) at this time. Mr. Johnson was to be made available as necessary.

Mr. Donaldson stated that many of the issues regarding the exchange process in general apply to both the ACE and Emery legislation. Many of these issues were discussed in prior meetings, both in Park City and in Vernal. The idea behind the Advancing Conservation and Education Act (ACE) is that it is a mechanism to finally build some real exchange machinery. It passed the House Natural Resources Committee in 2017. It passed the whole House in June 2018. The thinking is to provide a mechanism that is vast in scope that puts SITLA in the driver's seat where we can relinquish parcels that are within various conservation designations and select available land elsewhere. The downside is whether we can get that process to work quickly. Are

we conceding to the expansion of conservation areas and fully exiting those areas in a major way? We have some selection indemnity in-lieu lands that are 120 years old but are still being processed.

He explained that in the 1980 Supreme Court case, Andrus v. Utah, selection rights were switched from an acreage basis to a value basis. Chair Bachtell commented that it was a 5-4 decision in the U.S. Supreme Court. Mr. Donaldson said that he if it were possible he would like to simplify the legislation; to give the federal land managers less discretion, shorter time frames, and have some kind of incentivized action on applications.

Chair Bachtell thanked Mr. Donaldson for the presentation.

### **Presentation Regarding Exchange Metrics**

Chair Bachtell moved to 8(h), and welcomed Mr. Tyson Todd. Director Ure mentioned that Mr. Todd has recently relocated to the Uinta Basin and has an office in the Uintah County Building where he is able to communicate with the County Commissioners on a regular basis.

Mr. Todd shared a slide show which can be found on the Utah Public Notice Website at <https://www.utah.gov/pmn/files/414913.pdf>.

Mr. Barrus asked if BLM can buy from SITLA if we're looking at value for value on land exchanges. Can we monetize an exchange? Mr. Mower commented that we had exchanged Corona Arch and asked if we were paid for it. It was explained that SITLA received \$2,000,000 in value from the exchange. Chair Bachtell remarked that Congress could buy land if they were to appropriate funds to purchase it, but that doesn't usually happen. Mr. Christy stated that the land was not purchased.

Chair Bachtell stated that SITLA owns 100% of the royalties on the land that we're exchanging out of. His example was the Grand Staircase Escalante. SITLA only received 50% of the revenue on lands we exchange into. Someone puts a price on the scenery we trade for minerals, which is often said to be "priceless" but usually determined to be low-value in exchanges. The Community Impact Board received about \$250,000,000 in royalty money for lands that we

owned 100% of inside the former monument. When we exchanged, they got 50% of the money, and the Chairman has always been troubled by that fact. SITLA should be getting a higher value for lands we've been giving up. We did receive good coal deposits and methane, but when we exchanged we got \$50,000,000 plus \$200,000,000 in revenues from Drunkard's Wash. The state got the other 50% of the revenues. That's hard to quantify and perhaps we need a case study to look back and when we do values in the future, since we're stuck with revenue-sharing, maybe we ought to get more value for giving up those lands.

Mr. Todd noted a correction on one of the slides, from "50% of the mineral royalties to the county" to "... the state."

Mr. Ruppe asked about when we're using value for value, if we valuing those lands we're trading into at 100% or are we valuing those at 48.5%. Mr. Todd explained that in the LEDA account, the land is valued lower because we are paying the counties. Mr. Bachtell stated that in many cases we don't know the value of the land or the potential royalties so the appraisers just come up with one. If we were to do a case study on the Grand Staircase Escalante, we would find out that the actual value we got for the trade did not equal what we lost. Mr. Todd explained that there is an opportunity cost, but Chair Bachtell contended that there is much more involved. He'd like to see the BLM agree to a different appraisal formula because of what we may have lost in Grand Escalante. This is unique and there are no really good ways to appraise these land exchanges.

Director Ure asked the Chair whether the formula would be established by law or by rule; or is it negotiated. Mr. Christy replied that there's a Yellow Book standard (it's not a rule—it's a guideline for the BLM). Chair Bachtell claimed that with good evidence we may be able to get that changed.

Mr. Bullard explained that we don't know the prospects that the royalties we obtained in the Staircase were worth. There were people who thought the Staircase would never be viably mined. The factors there were very complicated. Chair Bachtell agreed that the appraising process is very complicated. He stated SITLA does not receive a lot of value for our inholdings inside Wilderness Areas and National Recreation Areas because a value can't be established since we can't develop the land around it. Some have said that these lands are "priceless," but we

don't get any real value. Typically when we do those trades – like in the ACE legislation -- we're trading out of those areas but they're going to say that since we can't develop them for minerals we aren't giving you the full value there.

Chair Bachtell thanked Mr. Todd for his presentation and invited the Board to discuss the topic further. Mr. Mower reminded the Board that during the tour out to the Basin SITLA discussed trying to increase our presence. He expressed his gratitude for Mr. Todd staffing the Vernal office so that we can have a greater presence and increased trust between us and the players in the Uintah Basin, which is our bread basket.

Mr. Todd expressed the fact that he is happy to be there. Chair Bachtell reminded Mr. Todd that he is now a direct emissary to the Ute Indian Tribe. The chair hopes that develops well because it's so important to get a personal relationship there to identify things in advance.

### **Presentation Regarding Exchange Timelines**

The Chair invited Mr. Fausett to discuss Exchange Timelines. Mr. Fausett shared a slide presentation that can be found on the Utah Public Notice Website at <https://www.utah.gov/pmn/files/414911.pdf>. Mr. Barrus asked for an electronic copy of slide show. Ms. Jones agreed to send it via email.

Chair Bachtell and Mr. Mower agreed that it takes a lot of investment on both sides to get exchange agreements done. Mr. Ruppe asked how many years it takes to get through the process. Mr. Fausett replied that it takes multiple years, but that we are unable to determine exactly how long in advance.

Director Ure shared that Mr. Christy has recently instigated a conference call every two weeks with the BLM on the UTTR Exchange implementation process and that has pushed the process along. The goal is to get the process completed before Senator Hatch leaves at the end of the year. Chair Bachtell reminded us that this is an unfunded mandate on BLM and thanked Mr. Fausett for an informative presentation.

## **Report Regarding the UDOT Exchange**

Chair Bachtell turned the time over to Ms. Erler who then presented a slide show which can be found on the Utah Public Notice Website at <https://www.utah.gov/pmn/files/411181.pdf>.

Chair Bachtell verified that internally, we move some things around on ledger accounts with other state agencies when we have a deficit. Ms. Erler explained that the only deficit we currently have is with Schools. He thanked her for her presentation.

## **Resolution Regarding Electronic Meetings, Board Resolution 2018-3**

Chair Bachtell introduced the Electronic Meetings Resolution and invited Mr. Johnson to explain it. Mr. Johnson said that the Open and Public Meetings Act was amended several years ago to provide for electronic meetings. The Resolution is similar to ones that other state agencies have adopted. It allows people to participate remotely during open meetings in order to facilitate a quorum being present. The Act specifically states that an organization needs to adopt a resolution in order to allow electronic meetings. It requires an Anchor Location, which for us will be the SITLA board room so that the public can be present and learn who is participating remotely. The Act requires that the Board be notified about remote participation at least 24 hours in advance. This Resolution meets the OPMA requirements. Once it is adopted, you are allowed to have electronic participation.

Mr. Ruppe moved that the Resolution be adopted. Mr. Woodbury seconded. The vote was unanimous in the affirmative.

Chair Bachtell invited Board members to participate in a working lunch during the closed session of the meeting.

Mr. Foot made a motion to close the meeting pursuant to: Utah Code §52-4-205(1)(c), Strategy Sessions to Discuss Pending or Reasonably Imminent Litigation, §52-4-205(1)(d), Strategy Sessions to Discuss the Purchase, Exchange, or Lease of Real Property, Including any Form of a Water Right or Water Shares, and §52-4-205(1)(a), Discussion of the Character and Professional

Competence of an Individual. Mr. Ruppe seconded the motion. The vote was unanimous in the affirmative. The meeting went into closed session at 12:40 p.m.

Mr. Mower moved that the Board re-convene the public meeting at 2:15 p.m. Mr. Ruppe seconded. The vote was unanimous in the affirmative. Mr. Bullard assumed the role of chair as Mr. Bachtell recused himself from the vote regarding appointment to the Advocacy committee and excused himself from the remainder of the meeting.

Mr. Mower moved that Mr. Tom Bachtell be appointed to the Advocacy Committee for a two-year term, and that Mr. Steve Ostler be appointed for a four-year term. Mr. Ruppe seconded it. The vote was unanimous in the affirmative.

Mr. Woodbury moved to adjourn. Mr. Foot seconded. The vote was unanimous in the affirmative. The meeting was adjourned at 2:16 p.m.